# STATE PERSONNEL BOARD, STATE OF COLORADO

Case No. 96B135

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### INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE

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MARY GALVIN-BOARD,

Complainant,

vs.

DEPARTMENT OF HUMAN SERVICES,

Respondent.

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Hearing was held on June 20, 1996 before Administrative Law Judge Robert W. Thompson, Jr. Respondent was represented by Stacy Worthington, Assistant Attorney General. Complainant represented herself.

Complainant's Exhibits A, B, C and D were admitted into evidence by stipulation of the parties. Exhibits E and F were excluded as irrelevant. Administrative notice was taken of State Fiscal Rule 2.803, which was marked as ALJ Exhibit 1.

Respondent's sole witness was Stephanie Venema, Manager of Human Resources. Complainant testified on her own behalf.

# MATTER APPEALED

Complainant appeals Respondent's decision to collect from her \$1,390 in overpayments of salary pursuant to State Fiscal Rule 2.803. For the reasons set forth herein, respondent's action is

affirmed.

#### **ISSUE**

Whether respondent's action was arbitrary, capricious or contrary to rule or law.

#### STIPULATION OF FACT

The overpayments occurred through no fault of the complainant.

### FINDINGS OF FACT

- 1. Complainant Mary Galvin-Board has served as a Rehabilitation Counselor I at the Glenwood Springs office of respondent Department of Human Services since June 1, 1994.
- 2. In January 1995, the job classifications which resulted from the PDQ process, an evaluation of all state classified positions, were entered into the state personnel employee data system. Complainant's position was erroneously entered as a Rehabilitation Counselor II.
- 3. In February 1995, the error in complainant's classification was detected and her classification entry in the employee data system was corrected to Rehabilitation Counselor I.
- 4. For some unexplained reason, the corrected classification was not picked up by the payroll data system, a computerized process designed to be automatic. Thus, complainant continued being paid at the counselor II rate, \$2991, instead of the counselor I rate of \$2,713, a difference of \$278 per month.

- 5. On June 1, 1995, complainant's anniversary pay increase was entered into the system as 5% over the correct salary of \$2,713. This automatic salary adjustment in the employee data system corrected the error in the payroll data system, so complainant began receiving her pay in the correct amount.
- 6. During the summer of 1995, Stephanie Venema, Manager of Human Resources at respondent's capitol complex site in Denver, received a report that there had been an overpayment of complainant's salary.
- 7. Venema requested the necessary information, which included complainant's job description, grade and step, salary and the amount of the alleged overpayment. She calculated the amounts herself to verify their accuracy and confirmed the information with the Division of Accounting.
- 8. The overpayments for the five-month period of January through May totaled \$1,390. After searching the rules and regulations for options, and discussing the matter with others familiar with the rules, Venema determined that there was no alternative under State Fiscal Rule 2.803 but to collect the amount of the overpayments from the employee.
- 9. State Fiscal Rule 2.803 (formerly State Fiscal Rule 2.31) provides in full:
- Through error, A State Employee may be paid more than is due. When the error is detected, provisions shall be made for the repayment of the overpayment.
- If the overpayment is nominal, it shall be deducted from the employee's next paycheck. However, in some cases the overpayment may be significant and require a repayment schedule extending over a period of time. The chief executive officer, or a delegate, of the State Agency shall establish a repayment schedule based on the

particular facts involved in each case. Any repayment schedule extending for more than six months shall be approved by the State Controller.

An employee's maximum liability for repayment, should an error go undetected for over a two year period, shall be limited to the total amount of the overpayment for the first two years in which the employee was overpaid.

(ALJ Exhibit 1.)

- 10. Complainant was on maternity leave during the 1995 summer and was scheduled to return to work initially on a part-time basis. Venema took this into consideration in deciding to not collect the overpayments until after complainant returned to work full-time.
- 11. By letter dated March 6, 1996, Venema advised complainant of the need to repay the amount of the overpayments and of alternative payment arrangements. (Exhibit A.)
- 12. Venema knows of six other overpayment cases dating to January 1995, five of which resulted from errors in the entry of PDQ classifications. All of those employees were required to repay the amount of the overpayments. Like complainant, they were not at fault.
- 13. The normal period for repayment is six months. A six-month extension is generally granted upon the employee's request.

#### DISCUSSION

In an appeal of an agency administrative determination, unlike a disciplinary proceeding, the complainant bears the burden to prove by preponderant evidence that the respondent's action was arbitrary, capricious or contrary to rule or law. <u>Cf</u>. <u>Department of Institutions v. Kinchen</u>, 886 P.2d 700 (Colo. 1994).

Complainant submits that it is unjust to penalize her for an error that was not her fault. Respondent contends that the application of State Fiscal Rule 2.803 is mandatory for the agency under the facts of this case.

Complainant is not being penalized for anything she did or did not do. Her conduct is not at issue. Rather, she is being required by the agency to repay a windfall, an amount of money to which she was not entitled and which was not authorized for her position. Complainant does not dispute that she was overpaid. She does not challenge the validity of State Fiscal Rule 2.803, which is facially applicable.

The procedure implemented under State Fiscal Rule 2.803 is not Draconian. The agency gave due regard to complainant's personal circumstances in not attempting to collect the amount of the overpayments until after she had returned to work full-time, and in properly offering an installment plan. The required repayments, while inconvenient to the payor, are not so egregious or untimely as to contravene any public policy.

Complainant has not shown by preponderant evidence that respondent's action to collect from her \$1,390 in salary overpayments was arbitrary, capricious or contrary to rule or law.

# CONCLUSION OF LAW

Respondent's action was not arbitrary, capricious or contrary to rule or law.

### ORDER

Respondent's action is affirmed. Complainant's appeal is dismissed with prejudice.

DATED this \_\_\_\_ day of July, 1996, at Denver, Colorado.

Robert W. Thompson, Jr. Administrative Law Judge

# CERTIFICATE OF MAILING

This is to certify that on the \_\_\_\_ day of July, 1996, I placed true copies of the foregoing INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE in the United States mail, postage prepaid, addressed as follows:

Mary Galvin-Board 1261 Lake George Road Oakland TWP, MI 48363

Mary Galvin-Board P.O.B. 515 New Castle, CO 81647

and in the interagency mail, addressed as follows:

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